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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/582,757	06/13/2006	Xavier Destree	27436U	6633
20529	7590	11/13/2007		
NATH & ASSOCIATES 112 South West Street Alexandria, VA 22314			EXAMINER GREEN, ANTHONY J	
			ART UNIT 1793	PAPER NUMBER
			MAIL DATE 11/13/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/582,757

Applicant(s)

DESTREE, XAVIER

Examiner

Anthony J. Green

Art Unit

1793

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 June 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>06/13/06</u> | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Response to Amendment

1. The preliminary amendment has been entered and accordingly claims 1-15 are currently pending in the application.

Specification

2. The abstract of the disclosure is objected to because it is not in the form of a single paragraph free of extraneous material. Correction is required. See MPEP § 608.01(b).

3. The disclosure is objected to because of the following informalities: The specification lacks a section entitled: Brief Description of the Drawings".

Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 9 and 12-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 9 it is unclear as to what is meant by the phrase "these shapes".

In claim 12 the phrase "generally plane shape" is a vague and indefinite as the phrase "generally plane shape" is a relative phrase which renders the claim indefinite. The phrase is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It is unclear as to what is meant by the phrase "conventional reinforcements".

Claims 13-15 provide for the use of a concrete element, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claim Rejections - 35 USC § 101

6. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

7. Claims 13-15 are rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over PCT International Application No. WO 02/18291 in view of Over et al (US Patent No. 5,451,471).

The English language equivalent of 02/18291 (i.e. US Patent Application Publication No. US 2004/0050302 A1) is relied on as the English translation of the PCT document.

The primary reference teaches, in the abstract, a concrete in which metallic fibres are dispersed, obtained through mixing with water a composition comprising:

- a) a cement;
- b) ultrafine elements with a pozzolanic reaction;
- c) granular elements distributed into two granular classes C.sub.1 > 1 mm and < 5 mm and C.sub.2 ranges from 5 to 15 mm;
- d) cement additions;
- e) an amount of water E added in the mixture;
- f) a dispersant, and preferably a superplasticizer;

g) metallic fibres, in an amount maximum equal to 120 kg/m^3 of concrete.

Paragraph [0098]+ teaches a method of making concrete materials from the concrete mix. According to paragraph [0030] the metallic fibers have an having an individual length l such that the concrete has a l/Φ ratio of at least 2, and preferably at least 3, l being the fiber individual length and Φ being the diameter of the biggest grain.

Over et al teaches that it is known in the art to utilize reinforcement fibers whose length lies between 10 and 70 mm and whose fiber diameter lies between 0.4 and 2 mm and in which the length-thickness ratio lies between 20 and 80.

The instant claims are obvious over the reference. The instant claims differ from the primary reference in that they fail to teach the use of a metal fiber having the recited diameter and aspect ratio. While the primary reference fails to teach the use of a fiber having the same diameter and aspect ratio it does teach that metallic fibers should be utilized that have a length to diameter of at least 2, preferably at least 3 and therefore it would have been obvious to utilize any metallic fiber meeting this requirement in the composition of the primary reference without producing any unexpected results absent evidence showing otherwise and therefore it would have been obvious to substitute the fibers of Over et al in the composition of the primary reference as these fibers possess an aspect ratio of greater than 3. As for the size of the aggregates such as sand and coarse aggregates the reference teaches sizes that encompass those which are instantly claimed. One of ordinary skill in the art at the time the invention was made would have considered the invention to have been obvious because the compositional

proportions taught by the reference overlap the instantly claimed proportions and therefore are considered to establish a prima facie case of obviousness. It would have been obvious to one of ordinary skill in the art to select any portion of the disclosed ranges including the instantly claimed ranges from the ranges disclosed in the prior art reference, particularly in view of the fact that;

“The normal desire of scientists or artisans to improve upon what is already generally known provides the motivation to determine where in a disclosed set of percentage ranges is the optimum combination of percentages”, In re Peterson 65 USPQ2d 1379 (CAFC 2003).

Also, In re Geisler 43 USPQ2d 1365 (Fed. Cir. 1997); In re Woodruff, 16 USPQ2d 1934 (CCPA 1976); In re Malagari, 182 USPQ 549, 553 (CCPA 1974) and MPEP 2144.05. As for the particle size of the

10. Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Givens. JR (US Patent No. 3,808,085 A)

The reference teaches, in claim 1, a load bearing reinforced-concrete structural member comprising 0.3 to 5.0 percent by volume of closely spaced short wire metal segments. According to column 5, lines 39+, the short wire segments can have a diameter of from about 0.006 inch to 0.0625 inches, a length of about ½ inch to about 3 inches and a ratio to length to diameter from about 40 to about 300 with the wire segments present in the concrete in an amount between 0.3 and 5.0 percent by volume. Column 1, lines 25+ teaches that it is known in the art that concrete contains cement,

sand and coarse aggregate. The compositions are utilized to form structural members which are produced by pouring the mixture into forms (see for example column 14, lines 38+).

The instant claims are obvious over the reference. As for the wire segments of the reference they possess diameters, aspect ratios and amounts that encompass or overlap that which is found in the instant claims. One of ordinary skill in the art at the time the invention was made would have considered the invention to have been obvious because the compositional proportions taught by the reference overlap the instantly claimed proportions and therefore are considered to establish a prima facie case of obviousness. It would have been obvious to one of ordinary skill in the art to select any portion of the disclosed ranges including the instantly claimed ranges from the ranges disclosed in the prior art reference, particularly in view of the fact that;

“The normal desire of scientists or artisans to improve upon what is already generally known provides the motivation to determine where in a disclosed set of percentage ranges is the optimum combination of percentages”, In re Peterson 65 USPQ2d 1379 (CAFC 2003).

Also, In re Geisler 43 USPQ2d 1365 (Fed. Cir. 1997); In re Woodruff, 16 USPQ2d 1934 (CCPA 1976); In re Malagari, 182 USPQ 549, 553 (CCPA 1974) and MPEP 2144.05. As for the particle size of the sand and coarse aggregates while the reference does not specifically recite the sizes utilized it would have been obvious to utilize conventional sizes and accordingly the sizes recited in the instant claims are obvious to one of ordinary skill in the art absent evidence to the contrary.

Information Disclosure Statement

11. The remaining references have been reviewed by the examiner and are considered to be cumulative to or less material than the prior art references relied upon in the above rejections.


References Cited By The Examiner

12. The remaining references have been reviewed by the examiner and are considered to be cumulative to or less material than the prior art references relied upon in the above rejections.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony J. Green whose telephone number is 571-272-1367. The examiner can normally be reached on Monday-Thursday 6:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry Lorengo can be reached on 571-272-1233. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Anthony J. Green
Primary Examiner
Art Unit 1793

ajg
November 02, 2007